**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Crl. Misc. application No. 888 of 2001

Vikram Singh & another Vs. State

Date of Decision :- 08/3/2006

**A.F.R. (Approved for Reporting)**

~~Not approved for reporting.~~

Date 08/3/06 Initial of Judge

**Note:-** Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL**
**AT NAINITAL**

**Criminal Misc. Application No.888 of 2001**
**(Old No. 2810 of 1995)**

1. Vikram Singh
   S/o Roop Ram
   R/o Jataul Taiyabpur,
   Police Station – Deoband
   District – Saharanpur
2. Surendra Pal Singh
   S/o Bhopal Singh
   R/o Village Basuwa Kheri
   Police Station – Manglaour
   District – Haridwar … Applicants

Versus

1. State of Uttaranchal
2. Bipin Kumar
   S/o Ram Kumar
   R/o Qasba and Police Station Jhabrera
   District – Haridwar … Respondents

Sri Alok Singh-Sr. Advocate for the applicant
Sri A.Rab-Addl. G.A., Sri Sudhir Kumar-learned A.G.A. and Sri K.S. Rautela-learned AGA for the State.
Sri Lok Pal Singh, learned counsel for the respondent No. 2.

**Hon'ble J.C.S. Rawat, J.**

This petition u/s 482 Cr.P.C. has been filed to quash the proceeding of Criminal Case No. 610 of 1991 pending before the court of Judicial Magistrate 1st Class Roorkee, District Haridwar.

It is alleged in the petition that FIR was lodged for taking away the sugarcane crop from the field No. 435 without the consent of the complainant. FIR was lodged u/s 379 and 411 I.P.C. and the applicants were nominated as accused in the said FIR. The investigation was made and the chargesheet was submitted. Thereafter, the petition was filed before the Hon'ble Allahabad High Court challenging the cognizance order taken by the Magistrate in the year 1995 though the chargesheet was submitted and the cognizance order was passed in the year 1991. When the petition was filed further proceedings of the case was stayed till 19th January, 1996. The case was listed

before the Hon'ble Allahabad High Court on 23.01.1996, 29.01.1996, 22.08.1997 and 09.03.1998 and thereafter the matter was transferred to this court. The stay order was not extended after 1st January, 1996 and application was moved for the extension of the stay already granted on 30.10.1995. Immediately thereafter the case was listed but that application was not pressed by the applicants to extend the stay order. Meanwhile the trail proceeded and the evidence was recorded in the trial court and after conclusion of the trial the present applicants were convicted 16.11.1998. The appeal was also preferred by the accused which was also decided on 07.12.2000. The appeal was allowed and the case was remanded to the trail court for trial in light of the observation of the judgment. Thereafter an application for extension of stay order was moved in this High Court in the year 2003 in this petition. This court while hearing this application had no full knowledge of the development took place in the trial and extended the stay order passed by the Allahabad High Court vide its order dated 18.03.2003.

Both the parties admitted that after 19th January, 1996 the trial proceeded and it concluded into the conviction of the applicants. It is also admitted that thereafter they preferred appeal before the appellate court. Learned counsel for the applicants also filed photocopy of the judgment of the trial court. The applicants before the Appellate Court raised the plea that the proceedings of the trial court were stayed by the High court and the conviction was bad. It was contended before the Appellate Court that the applicants had a petition challenging the cognizance order before the High Court u/s 482 Cr.P.C. bearing No. 2810/1995 in which the High Court had passed the stay order till 19th January, 1996 vide its order dated 30.10.1995. Thereafter it was contended that applicant Vikram Singh filed an affidavit before the trial court on 06.04.1996 that still the proceedings are pending before the court and the

proceeding of the trial court has been stayed by the High Court. The appellate Court believing the contention and the affidavit of the appellant observed that there was a stay order passed by the Allahabad High Court to stay the proceeding of the case. The trial court should not have proceeded with the trial and he should have ascertained whether the proceedings has been stayed or not by the court. The Appellate Court further observed that he had no option but to set aside the judgment and order of the trial court and to remand the case for trial. It is also revealed from the perusal of the record that there was no stay of the proceedings of the trial court from 19th January, 1996 to 18.03.2003. While the conviction order was passed in the year 1998 and the appeal was decided in the year 2000. Thus it is clear that the Appellate Court set aside the judgment on the wrong information submitted by the applicant, Vikram Singh. It was further pointed out that the applicants were participating in the trial. The applicants had given the wrong information to the court only to seek acquittal from the appellate court. Thus the conduct of Vikram Singh is not clear and he was concealing the facts from the court and seeking the relief. This petition is also liable to be dismissed on his ground alone. The case is ripe for the judgment and it would not be proper and just to invoke the jurisdiction u/s 482 Cr.P.C. at this stage. The entire evidence has already been recorded. It is also well settled position of law if the evidence had been recorded, it would be proper and just for the trial court to pass his order. The High Court cannot invoke it jurisdiction u/s 482 Cr.P.C. at such belated stage. It is also pertinent to mention here that the appellant had given wrong information by way of affidavit filed before the court below that the proceedings are stayed. The applicants had also raised the incorrect plea of facts before the Appellate Court. The applicants were concealing the facts to avoid their conviction by hook and crook. If the applicants would have narrated the correct facts before the Appellate

Court, the Appellate Court would not have remanded the matter to decide it afresh. This fact also reveals that the applicants have concealed the real facts before the Appellate Court. The applicants are not perusing their remedy with clean hands. The petition is devoid of merit and is liable to be dismissed and the same is accordingly dismissed.

**(J.C.S. RAWAT, J.)**

8th March, 2006
Shiv

888 of 2001

**Hon'ble J.C.S. Rawat, J.**

Copy of the Judgment and Order dated 16.11.1998 and 07.12.2000 passed by the II Addl. Civil Judge / Judicial Magistrate, Roorkee and III Addl. Sessions Judge, Haridwar respectively be taken on record.

Heard arguments of learned counsel for the parties.

The petition is dismissed.

**(J.C.S. Rawat, J.)**

Dt. : 08.03.2006

Shiv